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The New CERCLA Amendments—What Are They? What Do They Mean?

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THE NEW CERCLA AMENDMENTS --

WHAT ARE THEY? WHAT DO THEY MEAN?

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Getting a Handle on Hazardous Waste Controls

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I. INTRODUCTION

- A. In 1980, Congress addressed the problem of hazardous waste sites by enacting the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund"). There are two ways to clean up hazardous waste sites under CERCLA. First, under § 106, EPA can order potentially responsible parties ("PRPs") to clean up sites. Second, EPA can clean up sites under § 104, using Superfund Trust Fund ("Fund") money derived from a designated tax, and recover that money from PRPs under § 107.
- B. Superfund taxing authority expired on September 30, 1985. However, Congress has been attempting to reauthorize the statute since 1984. The 1985 Congressional session saw the introduction of dozens of Superfund bills, many of which sought to make major programmatic changes in the statute. The Senate passed a reauthorization bill, S. 51, on September 26, 1985. The House passed a different bill, H.R. 2817, on December 10, 1985. The conference to reconcile the two bills did not begin until February 26, 1986. Note that this outline was prepared in April

1986, and circumstances may have changed significantly since then.

C. The House and Senate bills differ substantially; the House bill is widely viewed as the more "environmentalist" of the two. Time limitations prevent my addressing every issue involved in the Superfund reauthorization. I will touch only briefly on three important and controversial matters: the program's size, scope, and funding mechanism. The Senate passed a \$7.5 billion program funded primarily by an excise tax on manufacturers. The House passed a \$10.1 billion program funded primarily by increases in the existing taxes on petrochemical feedstocks. The House bill, unlike the Senate bill, also extended Superfund to cover offshore oil spills and petroleum leaks from underground tanks. These differences have been major stumbling blocks for the conference committee. The topics I will discuss today, however, are core programmatic issues that should be resolved regardless of the program's size, scope, or source of funds. There are numerous other programmatic issues that I will not have time to address. For example, there is the matter of the right of contribution, which courts have inferred under CERCLA, and which the House and Senate bills would

specifically define. However, I hope to touch on the major substantive issues regarding CERCLA reauthorization.

II. LIABILITY AND CLEANUP ISSUES

A. Settlement

1. CERCLA's goal is site cleanup. That goal can best be achieved by fair allocation of cleanup responsibility among all PRPs, with Fund payment of the shares of PRPs who cannot be identified or located. A sound settlement policy can encourage private parties to do their fair share of cleanup, and can avert the use of EPA resources for unnecessary enforcement activities. Both the Senate bill and the House bill encourage settlements. However, the Senate bill makes far more significant changes in the settlement process than the House bill does.
2. The Senate bill allows EPA to enter settlements whereby PRPs will perform or pay for remedial actions or discrete parts of such actions. The bill establishes settlement procedures, and provides that if EPA decides not to use them, it must explain this decision to PRPs. Apart from these settlement procedures, EPA may enter judicially enforceable administrative

consent orders whereby a PRP will conduct a remedial investigation/feasibility study ("RI/FS").

- a. By the time an RI/FS is completed, EPA must give all PRPs the identity of other PRPs, public information about settlements at other facilities, and other non-privileged technical information that EPA will use in evaluating settlement offers. Upon request, EPA must provide this information before giving notice under the negotiation provisions.
- b. EPA must also give the PRPs a Nonbinding Preliminary Allocation of Responsibility ("NPAR") among all PRPs, including those who are unknown, insolvent, or otherwise unavailable. EPA must base this allocation on hazardous substance volume, toxicity, and mobility, and other relevant factors. EPA may issue subpoenas to obtain information necessary for performing this allocation. Costs of producing the NPAR shall be reimbursed by PRPs who settle, or treated as response costs recoverable under § 107

if no settlement is reached. An NPAR is not admissible or reviewable in any § 106 or § 107 action. It is not an apportionment or a statement on divisibility of harm or causation.

- c. After giving this notice, EPA may not take action under § 104(a) or § 106 for 180 days (or 90 days if there are nine or fewer PRPs), unless there is a significant threat to health or the environment. PRPs have 90 days after receiving notice (or 45 days if there are nine or fewer PRPs) to submit proposals for undertaking or financing remedial action. In extraordinary cases, EPA may extend this period for 30 days.
- d. An offer is in good faith, and a federal court may order EPA to accept it, if it exceeds 50% of the total amount in the NPAR and equals or exceeds the cumulative NPAR shares of the PRPs making the offer. If EPA rejects such an offer, it has the burden of persuading the court that the rejection was not unreasonable, in light of additional information

received after completion of the NPAR. Judicial review is limited to the rejection decision and does not include other issues concerning choice of remedy, computation of response costs, or the NPAR. Review shall not delay response action. If the court finds the rejection unreasonable, the Fund must pay the PRPs' reasonable costs of review, including legal fees. EPA's rejection of an offer that does not meet the above definition of good faith is not subject to judicial review.

- e. If there are more than three PRPs, and EPA accepts a good-faith offer that includes the entire amount in the NPAR except the "orphan share" of unavailable parties, EPA must grant a "bonus" from the Fund of 10% of the response action costs. EPA may also use Fund money to pay for the orphan share, whether or not a settlement is reached.
- f. EPA must consider all § 106 or § 107 settlement offers that are in good faith, which means that they are reasonable based on the objective

evidence. EPA may accept a good-faith offer for less than a substantial portion of the response costs if the amount and hazardous effects of the PRP's substances are comparatively minimal.

- g. Settlements may include liability limitations or covenants not to sue. However, they may also include provisions allowing future enforcement action. A covenant not to sue must expedite response action consistent with the National Contingency Plan ("NCP"), and must be in the public interest, considering factors such as relative effectiveness, completeness, and reliability of the remedy; risks remaining at the site; imposition of performance standards; and availability of funds for any potential future remedial actions. A covenant not to sue requires court approval and covenantee compliance with a § 106 administrative order or consent decree requiring performance of an EPA-approved response action. PRPs who perform EPA-approved cleanups shall

receive more expansive covenants than those who pay for government-conducted cleanups. If PRPs and federal agencies conduct joint response actions, the agencies are liable for future costs to the same extent that they participated in the original response actions.

Their contribution may come from the Fund or from PRPs who did not participate in the original action.

- i. If EPA rejects a proposed remedial action consistent with the NCP that does not involve offsite disposal at a facility complying with RCRA, and EPA subsequently requires such offsite disposal, EPA must grant an absolute covenant not to sue under § 106 or § 107 except for fraud or misrepresentation. EPA must grant a similar absolute covenant to a party who treats hazardous substances so that neither they nor their byproducts present a foreseeable significant future risk.
- j. There must be public notice and a comment period before a settlement or covenant not to sue becomes final.

3. The House bill, in contrast, is closer to EPA's current Interim CERCLA Settlement Policy. The House bill allows EPA to enter settlements whereby any party will conduct an RI/FS under § 104(b), or cleanup under § 106(a). The bill establishes settlement procedures, and provides that if EPA decides not to use them, it must explain this decision to PRPs. The decision is not subject to judicial review.
 - a. Under the bill's settlement procedures, EPA first notifies all PRPs of the identity of other PRPs, the volume and nature of each identified PRP's substances, and a volume ranking of substances at the site. Upon request, EPA must provide this information before giving notice under the negotiation provision. After giving notice, EPA may not act under § 104(a) or § 106 for 120 days, or § 104(b) for 90 days, except to address significant health threats. PRPs have 60 days after receiving notice to submit proposals for conducting or financing action under § 104(b) or § 106. If EPA determines that no good-faith proposals

have been submitted within 60 days, EPA may commence action under § 104 or § 106.

- b. EPA may grant covenants not to sue, but must either retain its power to sue for liability arising out of conditions not known when it certifies that remedial action is complete, or must require the covenantee to contribute to a Groundwater and Surface Water Protection Fund to finance cleanup of potential water contamination resulting from such conditions. A covenant not to sue must expedite response action consistent with the NCP, and must be in the public interest, considering the same factors listed in the Senate bill. A covenant not to sue takes effect only after EPA certifies that remedial action has been completed, and only if the covenantee complies with a § 106 consent decree requiring performance of an EPA-approved response action. A settlement may also provide that a party's future liability will not exceed its percentage of liability under the agreement. All liability

limitations are subject to judicial review in the consent decree process. The guiding principle is that a more permanent remedy should receive a more complete limitation.

- c. Participation in the settlement process is not an admission of liability, and is not admissible in any judicial or administrative proceeding. A § 106 settlement entered as a consent decree does not require EPA to find an imminent and substantial danger, or constitute a PRP admission of such a danger. There must be public notice and a 30-day comment period before the decree is entered.
- d. In § 106 and § 107 actions, EPA must reach quick settlements with de minimis PRPs whenever practicable and in the public interest. A PRP is de minimis if the settlement involves a minor portion of the response costs, and if either (1) the PRP's substances are comparatively minimal in amount and hazardous effect, or (2) the PRP owns the land where the facility is located, and did not conduct or permit hazardous

substance generation, transportation, storage, treatment, or disposal at the facility, or contribute to an actual or threatened release through any action or omission, and did not buy the property with actual or constructive knowledge that it was used for hazardous substance generation, transportation, storage, or disposal. De minimis settlements may include liability releases or covenants not to sue.

e. EPA may reimburse settling PRPs for certain costs. EPA's decisions on such mixed funding are not subject to judicial review.

f. EPA and other agencies authorized to conduct CERCLA response actions may settle § 107 cost recovery claims that have not been referred to the Department of Justice. EPA may establish regulations for settling such claims through arbitration.

Administrative settlements are subject to judicial review only for fraud, misrepresentation, other misconduct, or mutual mistake of fact. A settling

party is not liable for contribution claims regarding matters addressed in the settlement.

- g. If a release may have damaged natural resources under federal trusteeship, EPA must encourage the trustee to participate in settlement negotiations. A settlement may include a covenant not to sue for damages to natural resources under federal trusteeship if the trustee agrees to the covenant, and if the PRP agrees to protect and restore the damaged natural resources.

- 4. As compared to the House bill, the Senate bill places much more emphasis on early allocation of responsibility among PRPs, encourages more complete releases from liability, and gives PRPs more opportunities for judicial review.

B. Landowner Liability

- 1. Section 107 of the current statute allows EPA to recover cleanup costs from hazardous substance generators and transporters, from parties who owned or operated disposal facilities at the time of disposal, and from current owners and operators of such

facilities. Courts have generally interpreted § 107 to establish strict, joint and several liability, but to permit equitable judicial apportionment of damages. One problem with strict, joint and several liability is that it can impose liability on current facility owners who had no knowledge of, and no part in, earlier hazardous substance activities.

2. The Senate bill does not address this problem, but the House bill exempts certain owners from § 107. The owner of land on which a facility is located is not liable if he shows three things by a preponderance of the evidence: first, that he did not conduct or permit generation, transportation, treatment, storage, or disposal at the facility of any hazardous substance whose release or threatened release causes significant environmental hazards; second, that he did not contribute to a hazardous substance release or threatened release through any act or omission; and third, that he did not acquire the property with actual or constructive knowledge that it had been used for hazardous substance generation,

transportation, treatment, storage, or disposal.

3. Since this exemption is limited to parties without constructive knowledge of prior hazardous substance activities, it would not allow buyers to close their eyes to indications of such activities. Therefore, it would not let sellers evade their liabilities by transferring their facilities to willfully ignorant buyers. However, parties who could not reasonably have prevented contamination from occurring, and who did not knowingly purchase existing problems, would get some relief.

C. Cleanup Standards

1. Section 104 of the current statute requires remedial actions to be appropriate, consistent with the NCP to the extent practicable, and cost-effective in balancing protection of health, welfare, and the environment at a given site with availability of funds for other sites. EPA's policy is to require cleanups to meet all applicable or relevant standards set by environmental and public health statutes, with certain exceptions. The Senate bill does not drastically change the current

system. The House bill, in contrast, sets ambitious and relatively inflexible cleanup standards.

2. The Senate bill reiterates the standards of cost-effectiveness, appropriateness, and consistency with the NCP. It adds that cost-effectiveness includes consideration of total long- and short-term costs, including operation and maintenance costs. At a minimum, remedial actions must be relevant, appropriate, and sufficient to assure protection of health and the environment. Onsite remedial actions do not require RCRA permits. Treatment significantly reducing hazardous substances' volume, toxicity, or mobility is favored; offsite disposal without treatment is disfavored when practicable treatment technologies exist.
3. The House bill also reiterates the standards of appropriateness, cost-effectiveness, and consistency with the NCP, and requires sufficient control to protect health and the environment.
 - a. If a permanent solution meets these requirements and is feasible and achievable, EPA must select that solution to the maximum extent

practicable, considering factors such as availability of technology; installation period; uncertainties about performance; public support; and achievement of the solution at other similar sites. If no permanent solution is feasible and achievable, the site must be placed in a separate category on the National Priorities List ("NPL"), and the interim remedy undertaken must be reviewed periodically. Generally, in selecting remedial actions, EPA must assess the long-term effectiveness of various alternatives, including those that will permanently and significantly decrease toxicity, mobility, or volume. Such remedies are preferred.

- b. Onsite remedial actions under § 104 or § 106 must meet applicable or relevant and appropriate standards set by RCRA, the Toxic Substances Control Act ("TSCA"), the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act, including water quality criteria. EPA must also consider any Food, Drug, and Cosmetic Act tolerance level that

is applicable to the substance. Any onsite containment must meet RCRA requirements.

- c. If a more stringent state standard is applicable or relevant and appropriate, and there is a cost-effective remedial action that will achieve that standard, the standard must be met unless EPA and the state agree that it should not apply, or an alternative remedial action provides substantially equivalent protection of health and the environment, or the state has not consistently applied or planned to apply the standard to similar situations. A state siting standard may not be applied if it would effectively prohibit land disposal. In a § 104 action, if EPA decides not to apply a state standard, and the state notifies EPA that it does not concur with that decision and will assure payment of the additional costs of compliance with its standard, the remedy must comply with that standard. The state may recover those additional costs, plus its costs of suit, from

PRPs under § 107 if it establishes, on the administrative record, that EPA's decision against requiring compliance with the state standard was not supported by substantial evidence. A state may intervene in a § 106 action if it does not think its standards have been properly taken into account. The remedy must meet those standards if the state establishes, on the administrative record, that EPA's decision against requiring such compliance was not supported by substantial evidence, or if the state assures payment of the additional costs of meeting the standards. If a court upholds any EPA decision against applying a state standard, the state must pay EPA and PRP litigation costs.

- d. For onsite remedial action funded either by PRPs or by the Fund, EPA may waive the standards set under federal and state environmental laws if alternative action will provide substantially equivalent or greater protection of health and the environment, or if compliance is

technically impracticable. EPA may also waive these requirements for Fund-financed onsite remedial action if compliance would consume a disproportionate share of the Fund, considering the facility's size and complexity and the benefits obtainable through other uses of the money. Finally, EPA may waive these requirements for privately funded onsite remedial action if compliance would cost the PRPs substantially more than the remedy EPA would have selected if the action had been Fund-financed, and if EPA had invoked the disproportionate-share waiver. EPA may not grant a waiver resulting in a violation of the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, or the Marine Protection, Research, and Sanctuaries Act.

- e. A hazardous substance, pollutant, or contaminant may be transferred offsite only to a facility that complies with RCRA or, when applicable, TSCA. It may be transferred to a land disposal facility only if the facility unit to

which it is transferred is not releasing any hazardous waste or constituent into groundwater or surface water, and if all releases from other facility units are controlled by a RCRA-approved corrective action program.

- f. Emergency removal actions do not need federal, state, or local permits. EPA-approved onsite cleanups do not need federal or state permits, except under the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and state groundwater laws; EPA must establish procedures consolidating federal and state permitting under these laws. State permits are required only if the state notifies EPA of its standards during the RI/FS. Permit requirements are waived if a state does not issue a permit within 30 days after the final remedial engineering design is completed. Permits must conform to remedial action plans, and may not significantly increase response costs. No laws other than CERCLA and the Clean Water Act govern the permitting of remedial actions. Federal courts may

resolve permit disputes. EPA must issue regulations for state involvement in choice of remedy and in negotiations with PRPs. However, EPA may enter § 106 settlements and consent decrees without state concurrence. Finally, if a state notifies EPA of applicable environmental impact requirements, EPA must establish functionally equivalent procedures governing RI/FSs. Compliance with these procedures constitutes compliance with state environmental impact laws.

4. One recently released report found that the House provisions would multiply site cleanup costs by a factor of at least 2.6, and possibly by a factor of 5.5 or higher. Total CERCLA program costs could rise from EPA's earlier estimate of \$16 billion to \$39-81 billion, depending on the solutions actually implemented.

III. JUDICIAL REVIEW ISSUES

A. Pre-Enforcement Review

1. The current statute does not prescribe the timing or extent of judicial review of § 104 response actions or § 106 orders. Courts have been inclined to preclude judicial

review until EPA sues to enforce a § 106 order or recover response costs under § 107. Any person who willfully violates a § 106 order incurs daily penalties. Without pre-enforcement review, this penalty provision poses serious questions of fairness and due process. Both reauthorization bills codify the preclusion of pre-enforcement review and seek to address the due process questions by other means.

2. The Senate bill precludes judicial review of § 104 response actions, § 104(b) orders, and § 106 orders until EPA sues to enforce such orders or to recover penalties for their violation; or a private party sues for reimbursement of its costs of complying with a § 106 order; or EPA or a private party sues under § 107 to recover response costs, damages, contribution, or indemnification. Judicial review of EPA-ordered response actions is limited to the administrative record. EPA must establish procedures for interested persons to participate in developing that record. The court must uphold a challenged response action unless the objecting party demonstrates that it was

not reasonably justified under NCP criteria, including cost-effectiveness, or was otherwise not in accordance with law.

Anyone who complies with a § 106 abatement order may petition, and if necessary may sue, EPA for reimbursement of his reasonable compliance costs if he is not liable under § 107, or if the order was not reasonably justified under NCP criteria, or was otherwise not in accordance with law.

Finally, daily fines are imposed under § 106 only on persons who willfully violate § 106 orders without sufficient cause.

3. The House bill precludes judicial review of § 104 response actions, § 104(b) orders, and § 106(a) orders until one of the following actions is brought: an EPA suit to enforce such orders or to recover penalties for their violation; a private party action for reimbursement of its costs of complying with a § 106 order; an EPA or private party suit under § 107 to recover response costs, damages, contribution, or indemnification; a citizen suit alleging that the response action violated any CERCLA requirement; an EPA action for injunctive relief under § 106; a PRP motion to review EPA's choice of

remedy under a § 106 consent decree in which the PRP has agreed to conduct the judicially approved remedial action; or a PRP motion to review EPA's choice of remedy under a § 106 administrative order to which, without admitting liability or imminent and substantial danger, the PRP has agreed except for the choice of remedy. There is no right of appeal from a district court's ruling on a PRP motion to review EPA's choice of remedy under such a consent decree or administrative order. Judicial review under § 106 or § 107 of EPA-ordered response actions is limited to the administrative record and to objections and evidence not reasonably available when that record was developed. EPA must establish procedures for interested persons to participate in developing the record. The court must uphold a challenged response action unless the objecting party demonstrates that the choice was arbitrary and capricious or otherwise not in accordance with law. Anyone who complies with a § 106 abatement order may petition, and if necessary may sue, EPA for reimbursement of his reasonable compliance costs if he is not liable under §

107, or if the choice of remedy was arbitrary and capricious or otherwise not in accordance with law. Daily fines are imposed under § 106 only on persons who willfully violate § 106 orders without sufficient cause. Finally, any person may intervene if any of the above actions may impair his ability to protect his direct interests.

4. By precluding pre-enforcement review, both bills seek to speed cleanup at the risk of forcing PRPs to undertake or finance ill-advised remedial action without meaningful judicial review. To mitigate this problem, the Senate bill sets a somewhat more flexible standard for overturning EPA's choice of remedy once a PRP does get into court; the House bill expands the number of actions in which judicial review is available. Both bills establish a reimbursement procedure as a safety valve. Both bills also address the due process problem by adding a "without sufficient cause" requirement to the § 106 penalty provision.

B. Citizen Suits

1. The current statute does not provide for enforcement by citizen suits. Both reauthorization bills provide for citizen suits, with the House bill going farther than the Senate bill in this regard.
2. The Senate bill allows citizens to sue private or governmental entities for violation of standards, regulations, conditions, requirements, or orders effective pursuant to CERCLA, and to sue EPA for failure to perform nondiscretionary CERCLA duties. However, citizens may not challenge § 104 response actions or orders, or § 106 orders. Before suing, a citizen must give 90 days' notice to EPA, the state, and the prospective defendant. No citizen suit may proceed if EPA or a state is already suing for compliance. A court may award litigation costs to a substantially prevailing party. The United States or a state may intervene in any citizen suit. Any person may intervene in a suit brought by the United States or a state if its disposition may impair his ability to protect related interests. These citizen suit provisions do not preempt other statutory or common-law enforcement rights.

3. The House bill allows citizens to sue private or governmental entities for violation of any requirement effective pursuant to CERCLA. A citizen may also sue an entity for contributing to a non-permitted hazardous substance release or threatened release from a hazardous waste disposal site, if the release may present an imminent and substantial danger, and if the citizen has an interest that may be adversely affected. Before suing, a citizen must give 60 days' notice to EPA, the state, and the prospective defendant. No citizen suit may proceed if EPA or a state is already taking specified steps to enforce the law or ensure cleanup. Citizens may also sue EPA and other federal agencies for failure to perform nondiscretionary CERCLA acts or duties. A court may award litigation costs to a substantially prevailing party. The United States may intervene in any citizen suit. Any person may intervene in a suit if its disposition may impair his ability to protect his direct interests. These citizen suit provisions do not preempt other statutory or common-law enforcement rights.

IV. COMMUNITY RIGHT TO KNOW

- A. The current statute requires reporting of all releases of reportable quantities of hazardous substances, as defined by EPA. The House and Senate bills both expand the reporting requirements to help communities protect themselves against chemical disasters. The House right-to-know provisions are more extensive than the Senate provisions. Neither bill preempts state or local rights to require submission of information on hazardous chemicals.
- B. The Senate bill establishes several separate right-to-know requirements.
 - 1. Owners or operators of facilities where hazardous chemicals (as defined under OSHA's hazard communication standard) are produced, used, or stored must file and make public Material Safety Data Sheets ("MSDSs") and Emergency Inventory Forms containing specified information. EPA may establish minimum quantities that trigger this requirement.
 - 2. Owners or operators of facilities where releases of reportable quantities occur must file emergency notices containing specified information.

3. EPA must publish a list of extremely hazardous substances and quantities that would pose imminent and substantial dangers if released. Facilities possessing such quantities, and other facilities as the state directs, must notify the state.
4. EPA must publish a list of substances that are suspected of causing adverse health or environmental effects, and that are manufactured or imported in quantities greater than 500,000 pounds per year. Any person may petition to have substances added to or removed from this list. EPA must also establish reportable quantities of these substances. Any facility with ten or more employees that manufactures or processes more than 200,000 pounds per year, or uses more than 2000 pounds per year, of a listed substance, and any other facility as EPA may direct under specified circumstances, must annually file and make public certain information on its use, disposal, and releases of that substance. The facility need not perform any monitoring or measurement beyond that required by other laws.

5. The bill establishes a state and local emergency planning program. Facility owners and operators must give local emergency planning committees any information they request for purposes of preparing emergency plans.
 6. Finally, EPA must conduct a comprehensive review of emergency systems at representative facilities that produce, use, or store extremely hazardous substances.
- C. The House right-to-know provisions are much more elaborate. They do not apply to hazardous substance transportation or storage incident to transportation.
1. Owners or operators of facilities where hazardous chemicals (as defined under OSHA's hazard communication standard) are produced, used, or stored, and owners or operators of NPL facilities for which RI/FSs have been done, must file and make public MSDSs containing specified information, and must provide MSDSs to other facilities to whom they sell hazardous chemicals.
 2. EPA must publish a list of hazardous substances and reportable quantities whose release is likely to cause imminent and substantial danger. Individuals and local

emergency response committees may petition to have substances included on this list. The owner or operator of any facility at which a reportable quantity of a listed substance is present must file and make public a hazardous substance report containing specified information.

3. EPA must publish a list, and establish 12-month cumulative threshold amounts, of extremely toxic substances whose release in any amount or form may present an imminent and substantial danger to health, or which are suspected of causing cancer, birth defects, heritable genetic mutations, or other chronic human health effects. The owner or operator of any facility at which an extremely toxic substance is present during any 12-month period in excess of the threshold amount, and from which that substance is released during that period, must file and make public an extremely toxic substance status sheet containing specified information, including the total amount released. The facility need not perform any monitoring or measurement beyond that required by other laws.

4. EPA may, on its own motion or pursuant to a petition, exempt an owner or operator from the MSDS and hazardous substance report requirements if the exempted chemical, facility, or activity does not present a reasonable likelihood of injury to health or the environment. Notice and an opportunity for public comment must be provided before such an exemption is granted.
5. An owner or operator must provide certain information, including a hazardous substance's specific chemical identity, to a health professional who makes an appropriate request and who either needs the information for purposes of diagnosis or treatment, or is employed by the government and needs the information to evaluate the hazardous substance levels to which populations have been exposed, or to address the health consequences of such exposure. Trade secret protections that would otherwise cover this information do not apply when health professionals require it under these circumstances, but confidentiality agreements may be required.

professionals require it under these circumstances, but confidentiality agreements may be required.

6. If an abnormal or accidental release may present an imminent and substantial danger, or if a release of a quantity reportable under CERCLA may present a substantial threat, the facility owner or operator must immediately file emergency notices and emergency bulletins containing specified information.
7. The bill establishes a state and local emergency planning program. Facility owners and operators must give local emergency response committees any information they request for purposes of preparing emergency response plans.